REMARKS

This is in response to the *Advisory* Office Action of February 21, 2008, where the Examiner has rejected claims 1-22. By the present amendment, applicant has amended claims 1 and 12. After the present amendment, claims 1-22 remain pending in the present application. An early allowance of outstanding claims 1-22 in view of the following remarks is requested.

A.   Rejection of Claims 1, 3-5, 12 and 14-16 under 35 USC § 102(e)

The Examiner has rejected claims 1, 3-5, 12 and 14-16, under 35 USC § 102(e), as being anticipated by Fisher (U.S. Pub. No. 2004/0143620) ("Fisher").

By the present amendment, applicant has amended claim 1 for clarification purposes to read "configuring said first gateway to said data mode of operation <u>for a call</u>." Further, claim 12 has been amended in a similar fashion.

In the *Advisory* Office Action, same as the *Final* Office Action, the Examiner states that:

> It is also clear that when <u>gateway 106 is configured for a data connection</u> for a MoIP/FoIP, it is configuring/setting the gateway to data mode of operation. As recited in Fisher page 3, paragraph 28, <u>upon receiving VoIP call the gateway switches to a new VoIP call, which is configuring from the data mode (i.e. MoIP/FoIP) to a voice mode (i.e. VoIP)</u>. (emphasis added.)

Applicant respectfully submits that there is a fundamental distinction between Fisher and the invention of independent claims 1 and 12. It is respectfully submitted that the confusion seems to emanate from a major, but subtle, technical misunderstanding of gateway operations. A gateway device, such as gateway 106, may have many communication channels, e.g. a few hundred channels. The gateway operates each communication channel independently of others. Therefore, when a call is being processed by one channel, each of the other channels may be

processing different calls at the same time. Therefore, the statement that "gateway 106 is configured for a data connection" is inaccurate. Gateway 106 is not considered to be in data mode only because one or more channels processing one or more calls, respectively, happen to be in data mode. When a new call arrives on a new channel for a customer who is already on an existing call being processed through another channel, placing the existing call on hold and switching to the new call neither changes the status of the existing call or channel (remains in data if already in data mode, or remains in voice mode if already in voice mode), nor does it change the gateway configuration as a whole (since data mode and voice mode are associated with each single channel and not the gateway as a whole.). Further, the status of another channel or existing call is not considered the default status of another channel. Each channel has a known and independent status. It is respectfully submitted that, conventionally, just as in Fisher, each gateway channel or call begins in voice mode, and the channel or call is reconfigured to data mode if certain modem signals, such as an answer tone, are detected.

It is respectfully submitted that Fisher is discussing two different and distinct calls, where one call has already been answered, i.e. existing connection, which can be a data connection or a voice connection, and a second incoming call. It is well known in the art that a gateway can receive and handle many calls. Therefore, the Examiner's statement that the gateway in Fisher is in data mode of operation is technically inaccurate, because the statement is incomplete. Applicant admits that the gateway in Fisher is in data mode of operation <u>for the existing call</u>. When one call is in data mode, it does not mean that the gateway is set up in data mode for all the calls. As previously stated, Fisher describes the conventional approach where each call begins in voice mode (i.e. default mode.) Therefore, when the second call arrives, the second call begins in voice mode for that call.

Again, it is technically incorrect to state that when the second call arrives, the gateway is in data mode, only because one existing connection through the gateway is in data mode. As an example, at the time a new call arrives at the gateway, the gateway may have ten (10) other communication lines that are supporting ten (10) calls in voice mode and three (3) other communication lines that are supporting three (3) calls in data mode. It is respectfully submitted that one cannot state that the gateway, as a whole, is in data mode or is in voice mode. The mode of operation can only be defined with respect to each line or call. By the present amendment, applicant has made a clarification amendment to claim 1 to recite "configuring said first gateway to said data mode of operation for a call."

The Examiner has also stated that claim 1 does not recite "a default mode of operation." Applicant respectfully submits that claim 1 clearly states that the gateway is in data mode of operation for the call, and that the first gateway is enabled to detect human voice and/or silence on the communication line, and that the first gateway is maintained in said the data mode. It is respectfully submitted that the words "a default mode of operation" are not significant when the claim language clearly defines the default mode of operation of the gateway for the call to be data mode.

Turning to the Examiner's rejection of independent claim 1, the Examiner states that Fisher discloses "configuring said first gateway to said data mode of operation; ... enabling said first gateway to detect human voice and/or silence on said communication line." Applicant respectfully disagrees.

According to Paragraphs 22-28 of Fisher that have been cited by the Examiner, gateway 106 is operating in a voice mode for the incoming call while the client is engaged in an existing connection (whether a voice connection or a data connection.) As stated above, applicant

respectfully submits that the incoming call and the previously established connection from a previous call are two distinct calls and unrelated. In other words, just because it happens that the existing connection is a data connection, it does not mean that gateway 106 is configured in data mode for the new incoming call, and there is no disclosure in Fisher to that effect. It is respectfully submitted that Fisher does not even mention the default mode of operation of gateway 106 for the new call. Fisher simply deals with responding to an incoming call while another call is already in place, i.e. a call waiting scenario, and discusses how a V.92 modem-on-hold transaction is performed for the existing call, which is a data call. However, Fisher does not state that gateway 106 is in data mode for the new incoming call (or the call waiting.) As stated in the present application, the conventional approach is that the default gateway operation for each new call is that the gateway is in the voice mode of operation, and the gateway switches to data mode after detecting an answer tone from the client modem.

It is respectfully submitted that there is no disclosure in Fisher that gateway 106 detects human voice and/or silence on said communication line to determine whether the data mode of operation should be maintained or the first gateway should be reconfigured to the voice mode if human voice and/or silence on said communication line is detected. In Fisher, gateway 106 does not perform such detection. For example, there is no disclosure in Fisher that the mode of operation is changed from data mode to voice mode for the new call (call waiting) if human voice and/or silence on said communication line is detected. Applicant respectfully submits that placing the first call on hold and switching from the first call to a second call by client 110 does not indicate that gateway 106 was initially in data mode for the second call and switched to voice mode for the second call. It is respectfully submitted that in Fisher, gateway 106 remains in data mode for the first call while placed on hold, and the mode of operation of the second call is

independent of the first call. There is no disclosure in Fisher that the second call is treated any differently than the prior art approach, which is initiating the second call to client 110, going off-hook by client 110, if no answer tone is detected by gateway 106, gateway 106 remains in voice mode (for the second call) (i.e. gateway does not reconfigure from data mode to voice mode), and if answer tone is detected, gateway 106 reconfigures to data mode (for the second call.)

Accordingly, applicant respectfully submits that claim 1, as amended, is not anticipated by Fisher, and should be allowed. Further, claims 3-5 depend from claim 1, as amended, and should be allowed at least for the reasons stated above. Applicant has also amended independent claim 12 to include limitations similar to those discussed above in conjunction with claim 1, as amended. Therefore, independent claim 12, as amended, and its dependent claims 14-16, should also be allowed at least for the reasons stated above.

B.   Rejection of Claims 2, 11, 13 and 22 under 35 USC § 103(a)

The Examiner has rejected claims 2, 11, 13 and 22, under 35 USC § 103(a), as being unpatentable over Fisher in view of Baumann (U.S. Pub. No. 2003/0118008) ("Baumann").

Applicant respectfully submits that claims 2, 11, 13 and 22 depend from claims 1 and 12, respectively, and should be allowed at least for the reasons stated above.

C.   Rejection of Claims 6 and 17 under 35 USC § 103(a)

The Examiner has rejected claims 6 and 17, under 35 USC § 103(a), as being unpatentable over Fisher in view of Hansen (USPN 5,940,475) ("Hansen").

Applicant respectfully submits that claims 6 and 17 depend from claims 1 and 12, respectively, and should be allowed at least for the reasons stated above.

D.   Rejection of Claims 7 and 18 under 35 USC § 103(a)

The Examiner has rejected claims 7 and 18, under 35 USC § 103(a), as being unpatentable over Fisher in view of Wildfeuer (USPN 6,829,244) ("Wildfeuer").

Applicant respectfully submits that claims 7 and 18 depend from claims 1 and 12, respectively, and should be allowed at least for the reasons stated above.

E.   Rejection of Claims 8 and 19 under 35 USC § 103(a)

The Examiner has rejected claims 8 and 19, under 35 USC § 103(a), as being unpatentable over Fisher in view of Wildfeuer, and further in view of Schuster (USPN 6,785,261) ("Schuster").

Applicant respectfully submits that claims 8 and 19 depend from claims 1 and 12, respectively, and should be allowed at least for the reasons stated above.

F.   Rejection of Claims 9, 10, 20 and 21 under 35 USC § 103(a)

The Examiner has rejected claims 9, 10, 20 and 21, under 35 USC § 103(a), as being unpatentable over Fisher in view of Goldstein (U.S. Pub. No. 2003/0185222) ("Goldstein").
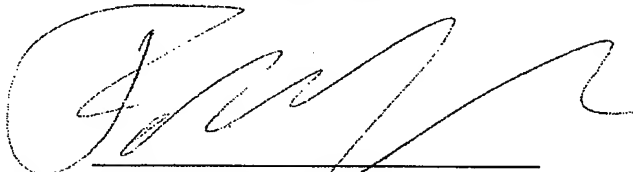
Applicant respectfully submits that claims 9, 10, 20 and 21 depend from claims 1 and 12, respectively, and should be allowed at least for the reasons stated above.

G.   Conclusion

Based on the foregoing reasons, an early Notice of Allowance directed to all claims 1-22

pending in the present application is respectfully requested.

Respectfully Submitted,
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Page 13 of 13